

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:20-cv-00954-WO-JLW**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF
FARHAD AZIMA'S NOTICE OF
CHANGE IN CIRCUMSTANCES
REGARDING RAS AL KHAIMAH'S
DEFAULT AS TO SPECIAL
MASTER'S ORDER AND
DECISION #1 [ECF NO. 316]**

Defendants Nicholas Del Rosso and Vital Management Services, Inc. (collectively, "Defendants") respectfully submit this response to Plaintiff Farhad Azima's March 19, 2024 "Notice of Change in Circumstances" [ECF No. 334] (the "Notice").

As the Court is aware, in her Report and Decision No. 1 [ECF No. 316] (the "Report"), Special Master Alice Richey found that Defendants were "not authorized to assert any privileges" belonging to nonparty Government of Ras Al Khaimah and its related instrumentalities ("RAK") and directed Defendants to advise RAK that it "must appear before the Court to assert any privileges" by March 18, 2024. Report at 17. Defendants objected to and appealed this portion of the Report [ECF No. 320] (the "Appeal") to Your Honor, identifying factual and legal errors that Defendants submit warrant reversal of this portion of the Special Master's Report. Defendants also sought a stay of the March 18, 2024 deadline. Both the Appeal and the stay request remain pending before the Court.

On March 17, 2024, counsel for RAK sent a letter to Defendants, advising that RAK would not be appearing on March 18, 2024 in the light of the pending Appeal. *See* Ex. A. Defendants forwarded the letter to the Special Master in an email on March 18, 2024, and the Special Master responded: “Thank you for the information. I cannot advise whether any additional actions should be taken by RAK or Defendants with respect to whether RAK should appear and assert its privileges, but there are no additional submissions that should be made to me on that issue.” *See* Ex. 1 to Notice. Because the Special Master noted that she would not accept further submissions, Plaintiff apparently filed its “Notice” with the Court.

The matters implicated by the Appeal concern important issues of a nonparty’s privilege with respect to documents and information in Defendants’ possession, custody and control. Respectfully, these issues should be decided on the merits. Rather than grappling with the substance of the issues raised in the Appeal, Azima seeks to circumvent them entirely, arguing that RAK’s failure to appear during the pendency of the Appeal justifies the wholesale waiver of its privileges and work product protection. Indeed, the relief requested in the Notice goes so far as to seek the production of privileged documents from both RAK’s and Defendants’ nonparty attorneys, Dechert LLP (“Dechert”) and Christopher Swecker (“Swecker”), even though the Special Master was never asked to address and never did address whether Dechert or Mr. Swecker were authorized and/or had standing to assert privilege on RAK’s behalf.

For these reasons and for the reasons set forth in the Appeal, the Court should deny the requested relief in Azima’s Notice.

Respectfully submitted, this the 21st day of March, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH, LLP**

By: /s/ Brandon S. Neuman
Brandon S. Neuman, NCSB# 33590
Jeffrey M. Kelly, NCSB# 47269
Samuel Rosenthal (special appearance)
Justin Kaplan (special appearance)
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
brandon.neuman@nelsonmullins.com
jeff.kelly@nelsonmullins.com
sam.rosenthal@nelsonmullins.com
justin.kaplan@nelsonmullins.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of filing to the following:

Ripley Rand
Christopher W. Jones
Womble Bond Dickinson (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, NC 27601
ripley.rand@wbd-us.com
chris.jones@wbd-us.com

Counsel for Plaintiff

Calvin Lee
Ian Herbert
Kirby D. Behre
Lauren Briggerman
Miller & Chevalier Chartered
900 16th Street, NW
Washington, D.C. 20006
clee@milchev.com
iherbert@milchev.com
kbehre@milchev.com
lbriggerman@milchev.com

Counsel for Plaintiff

This, the 21st day of March, 2024.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Brandon S. Neuman
Brandon S. Neuman, NCSB# 33590
Jeffrey M. Kelly, NCSB# 47269
John E. Branch III, NCSB# 32598
Samuel Rosenthal (special appearance)
Justin Kaplan (special appearance)
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
brandon.neuman@nelsonmullins.com
jeff.kelly@nelsonmullins.com
john.branch@nelsonmullins.com
sam.rosenthal@nelsonmullins.com
justin.kaplan@nelsonmullins.com

Counsel for Defendants